

OVERVIEW OF PUBLIC CHARGE RULE

**Katie Mathews and
Anna Leach-Proffer**



September 17, 2019

DISCLAIMER

THE INFORMATION PROVIDED BELOW IS GENERAL INFORMATION GATHERED FROM PUBLIC SOURCES AND IS NOT LEGAL ADVICE. FOR INFORMATION ABOUT A SPECIFIC CASE, PLEASE CONTACT AN IMMIGRATION ATTORNEY.



September 17, 2019

What is the Public Charge Rule?

- Public charge” or the “public charge test” is used by immigration officials to decide whether a person can enter the U.S. or get a green card (Lawful Permanent Resident (LPR) status).
- In this test, officials look at all of a person’s circumstances, including income, employment, health, education or skills, family situation and whether a sponsor signed a contract (“affidavit of support”) promising to support the person.
- Officials can also look at whether a person has used specific benefit programs.

What is the current Public Charge Rule?

The current definition of “public charge” is a person who has become or is likely to become primarily dependent on the government for subsistence. The only benefits currently considered in the public charge test are:

- Cash assistance such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and comparable state or local programs.
- Government-funded long-term institutional care (for example, nursing home care paid for by Medi-Cal).

History of the current Public Charge rule

- Technically, the idea of “public charge” has been around since 1882 but, until 1999, the Department of State and the Immigration and Naturalization Service exercised broad discretion in interpreting it.
- In 1999, INS clarified that disqualifying assistance included SSI, cash assistance from the TANF program, state or local cash assistance programs (“GA”), and long-term institutionalization at governmental expense (i.e. a Medicaid nursing home, mental health institution)
- The old rule from 1999 excluded Medicaid/Medi-Cal, CHIP, food stamps, WIC, unemployment insurance, housing benefits, non-cash benefits (like) child care subsidies, etc. as disqualifying public benefits.

What is Changing and When?

- Final rule was issued on August 14, 2019 and will go into effect October 15, 2019.
 - Benefits received before October 15, 2019 will not be considered.
- Major change includes the types of benefits programs that will be considered in the analysis.
- And, will now assign mandatory ratings (heavily weighted positive, positive, negative, or heavily weighted negative) to the statutory factors to be considered which will negatively affect people with disabilities.

What is Changing and When?

New rule includes:

- Supplemental Nutrition Assistance Program (also known as SNAP, food stamps, or EBT)
- Public Housing or Section 8 housing assistance
- Medicaid (with certain exceptions, discussed later)

Who is impacted?

- The most impacted by the public charge change are those immigrants seeking lawful permanent status (LPR or “green card”).
 - These include spouses, children, and unmarried adult children of a U.S. citizen or Lawful Permanent Resident and the parents, siblings, and married children of a U.S. citizen.
- Other affected individuals:
 - Nonimmigrants (e.g. students, tourists, and temporary workers) applying for an extension or change of status within the United States
 - Applicants for an immigrant visa or nonimmigrant visa abroad

Who is not impacted?

- Many immigrants are exempt from the rule
- Those exempt include: refugees; asylees; survivors of trafficking, domestic violence, or other serious crimes (T or U visa applicants/holders);
- Lawful permanent residents (green card holders) are not subject to a public charge test when they apply for U.S. citizenship. Policy could apply upon return if a green card holder leaves the US for more than 180 days.

Medicaid (Medi-Cal in California)

- Medicaid services/coverage excluded:
 - Emergency medical treatment
 - Services or benefits funded by Medicaid but provided under the IDEA (Special Ed Services)
 - Benefits for Individuals under 21
 - Benefits received by a woman during pregnancy and for 60 days after.

Medicaid, Con't

- **IHSS received by adults 21 and over will be included in public charge consideration**

Remaining questions :

DRC is waiting on further guidance from DDS and others regarding the extent to which these changes will impact Medi-Cal funded Regional Center Services.

Lawsuits Challenging the Rule

- Many lawsuits have been filed challenging this rule.
 - At least 21 states, numerous counties and several non-profit organizations have challenged the rule.
 - Primary grounds:
 - **Violates Section 504 of the Rehabilitation Act.** Discriminates against people with disabilities, the heavy reliance on “health” and the way “health” defined – “a medical condition that is likely to require extensive medical treatment or to institutionalization, or that will interfere with the alien’s ability to provide care for himself or herself, to attached school or to work...”

Lawsuits Challenging the Rule

According to the lawsuits filed, this definition of health ensures that all, or almost all immigrants with disabilities would be assigned a heavily weighted negative factor. The “health” inquiry has effectively been turned into a “disability” inquiry.

Lawsuits Challenging the Rule

- Final Rule penalizes individuals with disabilities for using Medicaid – even though Medicaid is often the only provider of necessary services that promote self-sufficiency.
 - Services like IHSS, private duty nursing and Durable Medical Equipment are often not covered by private insurance, so even those who have insurance are forced to also apply for Medicaid to receive those services and supports.
 - Studies show that Medicaid is actually positively associated with employment of individuals with disabilities, in part because Medicaid covers employment supports. This rule effectively punish immigrants with disabilities for seeking the very services that will allow them to be most self-sufficient.

Lawsuits Challenging the Rule

- **Equal protection** – will disproportionately block admission of non-white, non-European immigrants from Asia, Latin America, and Africa. It will also prevent higher numbers of immigrants of color from extending their visas or becoming lawful permanent residents, and ultimately create more obstacles in the path to U.S. citizenship.
- **Arbitrary and Capricious:** The Rule punishes immigrants for participating in widely used public benefits programs that are designed to mitigate economic inequality and bolster self-sufficiency, particularly among low wage workers. The Rule also fails to adequately assess the costs that increasing the poverty of families and U.S. citizen children will have on the Nation, its states, and communities.
- **Contrary to Law:** The Rule is contrary to law, interferes with the states' rights to protect their residents, and exceeds the Administration's authority under federal immigration law by circumventing congressional intent.

What is DRC doing?

Our goal continues to be preventing this rule from going into effect

- Filed comments on the proposed rule
- Signed on to an amicus brief filed in the cases mentioned above.

If the rule does move forward...

- Provide general information and referrals with the goal of insuring that immigrants with disabilities and their families receive accurate information and guidance and do not unnecessarily decline or disenroll from benefits programs essential to their health and well-being.

Resources for Additional Information and Direct Assistance

- National Immigration Law Center
(NILC.org)
- Protecting Immigrant Families
(<https://protectingimmigrantfamilies.org/>)
- Immigrant Legal Resource Center:
(<https://www.ilrc.org/community-resources>)

Resources for Direct Assistance

Direct Service referrals:

<https://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>

<https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=CA>

Thank you!

Anna Leach-Proffer, Associate Managing
Attorney

Katie Mathews, Staff Attorney

Disability Rights California

1831 K Street

Sacramento, CA 95811

213-213-8000

916-504-5800